

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

U.S. DISTRICT COURT
DISTRICT OF MAINE
2011 AUG -3 A 9:56

IN THE MATTER OF THE APPLICATION OF THE)
UNITED STATES OF AMERICA FOR AN ORDER)
AUTHORIZING THE INSTALLATION AND USE)
OF A PEN REGISTER AND TRAP AND TRACE)
DEVICE ON TELEPHONE NUMBER)
(207)768-0502)

Misc. No. 11-mc-00147-MJK
UNDER SEAL

I. APPLICATION AND CERTIFICATION

James L. McCarthy, an attorney of the United States Department of Justice, United States Attorney's Office for the District of Maine, hereby respectfully applies to the Court for an Order, pursuant to Title 18, United States Code, Sections 3122 and 3123, authorizing the installation and use of a pen register and the use of a trap and trace device,¹ on telephone number (207) 768-0502.²

In support of this application, I state the following:

1. I am an "attorney for the Government" as defined in Rule 1(b)(1)(B) of the

¹ A "pen register" is a "device or process which records or decodes dialing, routing, addressing or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication . . ." 18 U.S.C. § 3127(3). A "trap and trace device" is "a device or process which captures the incoming electronic or other impulses which identify the originating number" or other identifiers "reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information not include the contents of any communication. 18 U.S.C. § 3127(4).

The Court may enter an Order authorizing a pen register or trap and trace device "anywhere within the United States." 18 U.S.C. § 3123(a)(1). A "court of competent jurisdiction" is defined as "any district court of the United States (including a magistrate judge of such court) . . . having jurisdiction over the offense being investigated." 18 U.S.C. § 3127(2)(A).

² This is a Verizon Wireless telephone number. The account subscriber is in the name of Mack Ayotte, Jr., 46 Howard Place, Apt. E, Presque Isle, Maine 04769.

Federal Rules of Criminal Procedure and Title 18 United States Code, Section 3127(5), and therefore, pursuant to Title 18, United States Code, Section 3122, may apply for an Order authorizing the installation and use of a pen register and trap and trace device.

2. I certify that the information likely to be obtained from a pen register and trap and trace device, is relevant in this instance to an ongoing criminal investigation being conducted by the United States Marshal's Service (USMS) in connection with possible violations of federal criminal offenses, including violation of Title 18, United States Code, Section 1073 (Unlawful Flight to Avoid Prosecution) by Matthew Lucas Ayotte who has been a fugitive from justice since leaving the custody of his third party custodian on June 17, 2011, and that it is believed that Matthew Lucas Ayotte has used and will continue to use telephone number (207) 768-0502 to contact his grandfather, Mack Ayotte, Jr., in an attempt to obtain money and to further his flight from prosecution.

3. Wherefore, based upon the above certification,³ I request that the Court issue an Order authorizing:

a. Pursuant to Title 18, United States Code, Section 3123, the installation and use of a pen register to register numbers dialed or otherwise transmitted from telephone number

³ Section 3122 "was not intended to require independent judicial review of relevance; rather, the reviewing court need only verify the completeness of the certification." In re United States, 10 F.3d 931, 935 (2^d Cir. 1993) (citing S. Rep. No. 541, 99th Cong., 2d Sess. 47 (1986); see also United States v. Fregoso, 60 F.3d 1314, 1320 (8th Cir. 1995) (holding that the judicial role under Section 3123(a) is ministerial in nature because a proper application under Section 3122 mandates entry of the order); Brown v. Waddell, 50 F.3d 285, 290 (4th Cir. 1995) (Section 3122 does not require the Government to establish probable cause to obtain a pen register or trap and trace device); United States v. Newman, 733 F.2d 1395, 1398 (10th Cir. 1984) ("[N]o showing of probable cause -- or even 'sufficient cause,' as defendant suggests -- is necessary to justify authorization of a pen register.").

(207) 768-0502, to record the date and time of such dialings or transmissions, and to record the length of time the telephone receiver in question is “off the hook” for incoming or outgoing calls for a period of 60 days from the date of the Court’s Order;

b. Pursuant to Title 18, United States Code, Section 3123, the installation and use of a trap and trace device, on telephone number (207) 768-0502, to capture and record the incoming electronic or other impulses which identify the originating numbers of wire or electronic communications, and to record the date, time, and duration of calls created by such incoming impulses, for a period of sixty days from the date of the Court’s Order, and that the tracing operations be without geographical limits;

4. I further request that the Court direct Verizon Wireless (the service provider for telephone number (207) 768-0502)) and any other person or entity providing wire or electronic communication service in the United States whose assistance is used to facilitate execution of the Order to notify agents of the USMS, upon oral or written request, of any and all changes (including additions, deletions, and transfers) in service regarding telephone number (207) 768-0502, to include telephone numbers and subscriber information (published and non-published) associated with these service changes.

5. Pursuant to Title 18, United States Code, Sections 3123(a)(1) and 3123(b)(2), I further request that the Order direct Verizon Wireless and any other person or entity providing wire or electronic communication service in the United States whose assistance may facilitate execution of the Order, to furnish the information, facilities, and technical assistance necessary to accomplish unobtrusively the installation and use of the pen register and trap and trace device.

6. I further request that the Order direct Verizon Wireless and any other person or

entity providing wire or electronic communication service in the United States whose assistance is used to facilitate execution of the Order, to furnish the results of the pen register and trap and trace device, to agents of the USMS as soon as practicable for the duration of the Order.

7. I further request that the Order direct that Verizon Wireless and any other person or entity providing wire or electronic communication service in the United States whose assistance is used to facilitate execution of the Order shall be compensated by the USMS for reasonable expenses directly incurred in providing such facilities and assistance.

II. REQUEST THAT THE APPLICATION AND ORDER BE FILED UNDER SEAL AND THAT THE ORDER PRECLUDE NOTICE

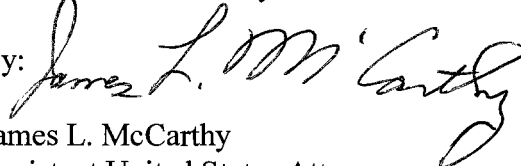
8. Based upon the information set forth herein, I believe that the disclosure of this Application or the Order could result in the continued flight of investigative target from potential prosecution, the destruction of or tampering with evidence, intimidation of or danger to Government informants, or other conduct that would seriously jeopardize the investigation. Therefore, pursuant to Title 18, United States Code, Section 3123(d), I further respectfully request that the Application and Order be sealed, that the identity of any target of the underlying criminal investigation may be redacted from any copy of this Order to be served on any service provider or other person, and that Verizon Wireless and any other person or entity providing wire or electronic communication service in the United States whose assistance is used to facilitate execution of the Order not disclose in any manner, directly or indirectly, by any action or inaction, the existence of the Order or the existence of the above-described investigation, to the listed subscriber for telephone number (207) 768-0502, the subscriber(s) of the incoming calls to or outgoing calls from telephone number (207) 768-0502, or to any other person, in full or

redacted form, unless or until otherwise authorized by the Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on August 3, 2011 at Bangor, Maine.

Respectfully submitted,

THOMAS E. DELAHANTY II
United States Attorney

By: 
James L. McCarthy
Assistant United States Attorney